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C O N F I D E N T I A L SECTION 01 OF 04 KUALA LUMPUR 000743

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SUBJECT: GOM PLAYING HARDBALL IN RUN-UP TO KEY BY-ELECTION

Classified By: ACTING POLITICAL SECTION CHIEF W. GARY GRAY, REASON 1.4

(B AND

D).

Summary

11. (C) The Government is increasingly playing hardball in the run-up to de facto opposition leader Anwar Ibrahim,s attempt to return to Parliament via an August 26 by-election in Permatang Pauh district of Penang. On the campaign trail, UMNO (United Malay National Organization) continues to spotlight the alleged sodomy issue, utilizing a video tape of the alleged the victim swearing on the Koran. In a move clearly aimed at Anwar, the ruling coalition has tabled parliamentary legislation on the use DNA evidence. GOM spokesmen continue to dwell on Anwar,s purported close links with the U.S. On August 20, the Anti-Corruption Agency announced the arrest of two opposition Perak state assembly members on graft charges, another move widely seen as politically timed for the by-election. Anwar,s lawyers maintain that the prosecution,s sodomy charges against Anwar are full of holes, but expect they will fail to prevent the Government from assigning a reliable pro-UMNO judge to the case when the court resumes on September 10. Despite all this, Anwar,s supporters and most other observers expect him to win easily in Permatang Pau. The key question to most will be the size of the margin of victory. Anwar continues to maintain that he will enter Parliament and form a new government by September 16, but even some of his close aides and supporters see this target date as unrealistic, and express concern regarding the stability of the opposition coalition. End summary.

Sodomy case front and center

12. (C) In a tactic to promote continuing visibility of the sodomy charges against Anwar, UMNO and the government-controlled media are spotlighting a video tape of alleged sodomy victim Saiful Bukhari swearing on the Koran that the act took place. The video was originally released on August 15, the eve of the by-election nomination day. UMNO reportedly is showing the tape extensively in the Malay areas of Permatang Pauh and the mainstream media is repeatedly airing the clip on prime time news programs. Saiful,s act has provoked heated debate in Islamic circles here. A number of religious authorities, including Malaysian Muslim Scholars Association President Abdul Halim Kadir, PAS spiritual leader Nik Aziz and former Indonesian President Wahid (a close friend of Anwar), have criticized the act of swearing on the Koran as having no basis in Islam and as an example of Muslims ignorantly mimicking Christian practices. PM Abdullah and other UMNO spokesmen have maintained that Anwar himself would swear on the Koran if he were really innocent. In another illustration of the ever present potential for fractures in the unwieldy opposition alliance, some PAS elements, including the Selangor state PAS youth organization, also have stated that Anwar should swear his innocence on the Koran.

DNA legislation prioritized

13. (C) As the first order of business upon Parliament,s resumption on August 18, the Government tabled legislation that would compel suspects to give DNA evidence or face fines or a jail sentence. Discussions on the need to develop a legal framework for the DNA issue have been ongoing in recent years, but the timing of this legislation seemed to most observers to be directly targeted at Anwar, who has refused to provide DNA evidence, maintaining that the Government planted such evidence in his first sodomy case in 1998. Among our legal sources there is some uncertainty on whether the currently tabled legislation could be made retroactive to apply to Anwar,s case. Anwar lawyer Sanakara Nair told us that even if the legislation is not explicitly retroactive,

the Government could still apply the new law to Anwar,s case by maintaining that his investigation was still active.

Anwar,s alleged U.S. links at issue

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14. (C) Anwar,s purported links to the U.S. feature prominently in the talking points of GOM officials. In an August 14 meeting with visiting U.S. Special Envoy to the OIC (Organization of the Islamic Conference) Cumber (reported separately), Foreign Minister Rais only briefly and vaguely mentioned the Anwar case, but when meeting with the press immediately afterward Rais addressed the issue at length. He professed perplexity that Anwar had become the "darling" of the U.S. and adding that "maybe we will have look into the reason the U.S. is wooing Anwar." Ensuing pro-government media coverage of the meeting focused solely on the issue of Anwar and his alleged links to the U.S. In Permatang Pauh, UMNO reportedly is circulating photos of Anwar standing beside a former U.S. official labeled as "architect of the Iraq war," and other pamphlets highlighting statements of support for Anwar by prominent U.S. figures. "U.S. interference" in Malaysia has become a hot topic in the current Parliamentary session, and Poloffs visiting Parliament on August 21 were subjected to numerous jokes from MPs of all sides regarding our real motives for being there. In an evident attempt to strike back at the GOM,s repeated charges that he is a U.S. "lackey," Anwar claimed in a recent interview to have evidence that the GOM was "backing the Jewish lobby in the U.S. and some parties inside Israel."

Opposition Pols charged with corruption

15. (C) On August 20 the Anti-Corruption Agency announced the arrests of two Perak State Assemblymen of Anwar,s People's Justice Party (PKR) on corruption charges. While graft is hardly unusual in Malaysia,s state governments, these arrests were widely assumed to be timed to inflict damage on Anwar,s by-election campaign. The move also threatens the slender three-seat majority enjoyed by the opposition in the Perak Assembly and lends plausibility to a claim by the state UMNO leader that his party will regain control in Perak by the end of this month. A PKR MP we spoke to on August 21 did not contest the guilt of the two PKR assemblymen, only noting that they were among a number of inexperienced newly-elected opposition state level officeholders and undoubtedly had fallen prey to an entrapment scheme. He added that among opposition ranks were numerous new office-holders with sub-par qualifications, some former UMNO members, who had unexpectedly won their races in the March elections. The Perak cases, along with the ACA,s hasty revival of a ten-year old case against rebellious SAPP (Sabah People,s Progressive Party) leader Ong Tek Lee, serve as a warning to opposition and potentially dissident ruling coalition politicians of the potent weapons remaining in the Government's repertory.

Legal process against Anwar grinds on

16. (C) Anwar and his lawyers will be back in court on September 10. Sankara Nair of the Anwar defense team told Poloff on August 20 that his Justice Ministry sources are certain the case will be transferred from the Sessions Court to the High Court, with the likelihood that a reliably pro-UMNO judge, Apandi Ali, will be assigned. In that eventuality, Sankara said that his defense team would argue for Apandi,s recusal, based on his previous public statement to the effect that Anwar was guilty of the first sodomy charges brought ten years ago. Sankara acknowledged that such a recusal request probably would not succeed. Technically the issue of bail could be revisited at the September 10 hearing, but Sankara was confident that there was no precedent or real possibility for the previous bail decision to be overturned. He said the court could impose new conditions, however, including impounding Anwar,s passport and limiting his movements to prevent him from nationwide political campaigning.

17. (C) Sankara, not surprisingly, asserted to us that the evidence against Anwar is full of holes. He provided a copy of the original handwritten police report of Saiful,s complaint, which states that the act took place between 3 and 4 p.m. on June 26, was non-consensual, and implies that it was merely the last of more than one such incident. The charges filed against Anwar on August 7, however, allege that

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he sodomized Saiful only once and that the act was consensual. Sankara maintained that Anwar had a strong alibi for the time of the alleged sodomy. According to Sankara, Anwar indeed was present at the condominium mentioned in the police statement at the time of the alleged incident, but was accompanied by a number of other people. Sankara said the couple who owned the apartment were present and could attest that Saiful only arrived at 4.30 p.m. on the fateful day to deliver some documents. Sivarasa Rasiah, another Anwar

lawyer, has told us that police unsuccessfully tried to intimidate the couple into changing their statement. Sankara also said the defense will highlight a statutory declaration of Dr. Osman Hamid, a Burmese Muslim physician who examined Saiful on July 28, just hours before the latter lodged the police report. Osman,s report, which has been leaked to the press, indicated no evidence of sodomy. Osman made a declaration on August 7 denying that he had leaked the report, reiterating his earlier findings, and implying that he had faced intimidation from police. He reportedly has left the country.

Anwar by-election victory foreseen

18. (C) Despite the Government,s hardball tactics, Anwar is widely expected to win easily on August 26. Deputy Home Affairs Minister Wan Farid conceded to Poloffs on August 21 that UMNO faced an "uphill battle" in defeating Anwar. UMNO's candidate Arif Shah, who has no national profile but strong local roots in Permatang Pauh, was the only victorious UMNO candidate in last March's contests for the district's three state assembly seats. Fulfilling the customary role of the UMNO Vice President, DPM Najib has been appearing extensively in Permatang Pauh to campaign for Arif. PKR Penang MP Yusmadi Yusuf said the only issue would be the size of Anwar,s majority -- to give momentum to his push for national office he had to exceed Wan Azizah,s 13,000 vote margin in the March election. In Yusmadi,s view, more critical than the by-election itself is the question otheQpost-election cohesiveness of the opposition alliance. He said that it was critical for Anwar and PKR to avoid taking any stances during the Permatang Pauh campaign that would undermine the coalition. In this regard he also expressed concern about the upcoming DAP convention on August 23-24, pointing to the danger of unsophisticated DAP grassroots elements voicing their worries over Malay and Islamic dominance and thereby undermining opposition unity. Ever mindful of this potential for dissension in the opposition ranks, in Permatang Pauh UMNO reportedly is circulating posters of an "Anwar cabinet" that is dominated by non-Malay figures and relegates PAS leaders to minor portfolios. Despite these concerns, all reports indicate that PKR's alliance partners PAS and DAP are fully engaged in supporting Anwar's campaign on the ground in Permatang Pauh.

19. (C) Anwar continues to maintain that he will enter Parliament and form a new government by September 16, but even some of his close aides and supporters see this target date as unrealistic, and, as noted above, express serious concerns about the ability of the opposition alliance to hold together. Sankara conceded that at best no significant moves are likely until the October 13 resumption of Parliament , following the fasting month. PKR leaders are hoping Anwar can be sworn in and assume his position as parliamentary opposition leader by August 29 when PM Abdullah tables the 2009 national budget. The Election Commission has some flexibility, however, in the amount of time it takes to report the results of the by-election to the Parliament Speaker, who then can promptly, or not, schedule the swearing in of the new MP.

Embassy election monitoring plans

110. (C) Acting Pol Chief and Pol FSN will be in Permatang Pauh August 24 -26 to monitor the campaigning and voting. Thus far we have not detected any more than the usual reports of traditional Malaysian electoral skullduggery, e.g., UMNO paying residents to temporarily give up their identification cards for use by UMNO voters brought in from outside, and opposition contacts have not expressed any particularly serious concerns about the potential for UMNO to steal the

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election. If an obviously fraudulent result were to occur, we should be prepared to express our strong concern promptly.

KEITH